

JACKSON LEWIS P.C.  
200 Connell Drive  
Suite 2000  
Berkeley Heights, New Jersey 07922

(908) 795-5200

By: /s/ Robyn L. Aversa  
Robyn L. Aversa

ATTORNEYS FOR DEFENDANT

Dated: July 20, 2020

# EXHIBIT A

Robyn L. Aversa, Esq. (Bar ID# 039631988)  
JACKSON LEWIS P.C.  
200 Connell Drive, Suite 2000  
Berkeley Heights, NJ  
(908) 795-5213  
ATTORNEYS FOR DEFENDANT

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DANIEL A. NAULT,	:	
	:	SUPERIOR COURT OF NEW JERSEY LAW
Plaintiff,	:	DIVISION: SPECIAL CIVIL PART –
	:	HUDSON COUNTY
	:	
v.	:	
	:	Docket No. HUD-DC-006022-20
IMPERIAL DADE,	:	
	:	
Defendants.	:	<b>NOTICE OF FILING OF NOTICE FOR</b>
	:	<b>REMOVAL</b>
	:	

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TO: Clerk of the Court  
Hudson County Superior Court of New Jersey  
Hudson Vicinage – Special Civil Division  
583 Newark Avenue  
Jersey City, New Jersey 07306

Daniel A. Nault  
181 S. Moetz Drive  
Milltown, New Jersey 08850

**PLEASE TAKE NOTICE** that on July 20, 2020, Defendant Imperial Bag & Paper Co, LLC d/b/a Imperial Dade (“Defendant” or the “Imperial”), electronically filed a Notice for Removal of this action to the United States District Court for the District of New Jersey with that court.

**PLEASE TAKE FURTHER NOTICE** that in accordance with 28 U.S.C. § 1446, Defendant is submitting a true and correct copy of that Notice for Removal, which is attached hereto as Exhibit A, for filing with the Superior Court of New Jersey, Hudson County.

Respectfully submitted,

JACKSON LEWIS P.C.  
200 Connell Drive, Suite 2000  
Berkeley Heights, NJ 07922  
(908) 795-5200

By: /s/ Robyn L. Aversa  
Robyn L. Aversa

ATTORNEYS FOR DEFENDANT

Dated: July 20, 2020

# EXHIBIT 1

Robyn L. Aversa, Esq. (Bar ID# 039631988)  
JACKSON LEWIS P.C.  
200'Connell Drive  
Suite 2000  
Berkeley Heights, New Jersey 07922  
(908) 795-5200  
ATTORNEYS FOR DEFENDANT

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

DANIEL A. NAULT,

Plaintiff,

V.

IMPERIAL DADE,

Defendant.

Civil Action No.

**NOTICE AND PETITION OF REMOVAL  
OF CASE FROM THE SUPERIOR  
COURT OF NEW JERSEY, SPECIAL  
CIVIL PART, HUDSON COUNTY**

To: William T. Walsh, Clerk of Court  
United States District Court for the District of New Jersey  
M.L. King, Jr., Federal Bldg. & U.S. Courthouse  
50 Walnut Street  
Newark, NJ 07102

Daniel A. Nault  
181 S. Moetz Drive  
Milltown, New Jersey 08850

Defendant Imperial Bag & Paper Co, LLC d/b/a Imperial Dade (“Defendant” or “Imperial”), pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, respectfully submits this Notice and Petition for Removal of a Case from the Superior Court of New Jersey, Special Civil Part, Hudson County, bearing Docket No. HUD-DC-006022-20, and as grounds for removal allege as follows:

1. On June 24, 2020, Plaintiff Daniel A. Nault (“Plaintiff”) filed a civil action captioned Daniel A. Nault v. Imperial Dade, Docket No. HUD-DC-006022-20, in the Superior Court of New Jersey, Special Civil Part, Hudson County. A true and correct copy of the summons and complaint are annexed hereto as Exhibit A.

2. Imperial received a copy of the summons and complaint on July 9, 2020, within thirty (30) days of the filing of the notice and petition for removal.

3. This notice and petition is timely filed within the provisions of 28 U.S.C. § 1446. Imperial has effected removal within thirty (30) days of receipt of a paper from which it could first be ascertained that this action is removable. See 28 U.S.C. § 1446.

4. Imperial has not filed an answer or other pleading in the Superior Court of New Jersey.

5. Removal is proper under 28 U.S.C. § 1441(a) because this Court has original jurisdiction of this action pursuant to 28 U.S.C. § 1331 as this action involves claims that relate to the laws of the United States – specifically, the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1001, et seq.

6. A defendant has an absolute right to remove any action filed in state court over which the federal courts have original jurisdiction. 28 U.S.C. § 1441(a). This includes civil actions arising under the Constitution, laws, or treaties of the United States. 28 U.S.C. § 1331.

7. Ordinarily, determining whether a particular case arises under federal law turns on the “well-pleaded complaint rule.” Franchise Tax Bd. Of Cal. v. Construction Laborers Vacation Trust for Southern Cal., 463 U.S. 1 (1983). The Supreme Court has explained that “whether a case is one arising under the Constitution or a law or treaty of the United States, in the sense of the jurisdictional statutes [,] ... must be determined from what necessarily appears in the



plaintiff's statement of his own claim in the bill or declaration, unaided by anything alleged in anticipation of avoidance of defenses which it is thought the defendant may interpose." Taylor v. Anderson, 234 U.S. 74, 75-76 (1914).

8. There is an exception, however, to the well-pleaded complaint rule. "[W]hen a federal statute wholly displaces the state-law cause of action through complete preemption," the state claim can be removed. Beneficial Nat. Bank v. Anderson, 539 U.S. 1, 8 (2003). This is so because "[w]hen the federal statute completely pre-empts the state-law cause of action, a claim which comes within the scope of that cause of action, even if pleaded in terms of state law, is in reality based on federal law." Id.

9. It is well-established that ERISA is one of the statutes to which the complete preemption doctrine applies as an exception to the well-pleaded complaint rule. See Aetna Health Inc. v. Davila, 542 U.S. 200 (2004).

10. Here, notwithstanding Plaintiff's characterization of his claim as a tort claim, Plaintiff's claim arises under ERISA. In his Complaint, Plaintiff alleges that he is entitled to a 401K match of \$3,529.00 from Defendant. (See Exhibit A). As such, because ERISA completely preempts Plaintiff's state law claim, it is necessarily federal in character such that removal based on federal question jurisdiction is appropriate.

11. In sum, this Court has original jurisdiction over Plaintiff's claims by virtue of the fact that they relate to an employee benefit plan covered by ERISA. Accordingly, this action is removable to this Court pursuant to 28 U.S.C. §§ 1331, 1441, and 1446.

12. To the extent that any of Plaintiffs' claims do not relate to an employee benefit plan covered by ERISA, this Court has supplemental jurisdiction pursuant to 28 U.S.C. §§ 1367 and 1441(c).

13. Imperial submits this Notice without waiving any defenses to the claims asserted by Plaintiff, including improper service of process or Plaintiff's failure to state any claims upon which relief may be granted.

14. Venue is proper in this Court.

15. Pursuant to 28 U.S.C. § 1446(d), Imperial has given written notice of the removal of this action to all adverse parties, and has filed a copy of this notice with the Clerk of the Superior Court of New Jersey, Special Civil Part, Hudson County.

WHEREFORE, Imperial respectfully requests that the within action, now pending in the Superior Court of New Jersey, Special Civil Part, Hudson County, be removed to the United States District Court for the District of New Jersey.

Respectfully submitted,


JACKSON LEWIS P.C.  
200 Connell Drive  
Suite 2000  
Berkeley Heights, New Jersey 07922  
(908) 795-5200

By: /s/ Robyn L. Aversa  
Robyn L. Aversa

ATTORNEYS FOR DEFENDANT

Dated: July 20, 2020

# EXHIBIT A

 <p>Court's Address and Phone Number:          HUDSON Special Civil Part          595 NEWARK AVENUE, ROOM 104          JERSEY CITY, NJ 07306-0000          201-748-4400 ext.66680</p>	<p>Superior Court of New Jersey          Law Division, Special Civil Part          HUDSON County          Docket No: HUD-DC-006022-20          Civil Action          TORT-OTHER</p>
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**YOU ARE BEING SUED!**

<p><b>Person or Business Suing You (Plaintiff)</b>          Daniel A Nault</p>	<p><b>Person or Business Being Sued (Defendant)</b>          Imperial Dade AK Robert Tillis</p>										
<p><b>Plaintiff's Attorney Information</b></p>	<p><b>The Person or Business Suing You Claims You Owe the Following:</b></p> <table border="0"> <tr> <td>Demand Amount</td> <td>\$3529.00</td> </tr> <tr> <td>Filing Fee</td> <td>\$75.00</td> </tr> <tr> <td>Service Fee</td> <td>\$7.00</td> </tr> <tr> <td>Attorney's Fees</td> <td>\$0.00</td> </tr> <tr> <td><b>TOTAL</b></td> <td><b>\$3611.00</b></td> </tr> </table>	Demand Amount	\$3529.00	Filing Fee	\$75.00	Service Fee	\$7.00	Attorney's Fees	\$0.00	<b>TOTAL</b>	<b>\$3611.00</b>
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Filing Fee	\$75.00										
Service Fee	\$7.00										
Attorney's Fees	\$0.00										
<b>TOTAL</b>	<b>\$3611.00</b>										

In the attached complaint, the person or business suing you briefly tells the court his or her version of the facts of the case and how much money he or she claims you owe. If you do not answer the complaint, you may lose the case automatically and the court may give the plaintiff what the plaintiff is asking for, plus interest and court costs. You have 35 days from the date of service to file your answer or a signed agreement. If a judgment is entered against you, a Special Civil Part Officer may seize your money, wages or personal property to pay all or part of the judgment. The judgment is valid for 20 years.

**IF YOU DISAGREE WITH THE PLAINTIFF'S CLAIMS, A WRITTEN ANSWER OR SIGNED AGREEMENT MUST BE RECEIVED BY THE COURT ABOVE, ON OR BEFORE 08/10/2020, OR THE COURT MAY RULE AGAINST YOU. IF YOU DISAGREE WITH THE PLAINTIFF, YOU MUST DO ONE OR BOTH OF THE FOLLOWING:**

- 1. Answer the complaint.** An answer form that will explain how to respond to the complaint is available at any of the New Jersey Special Civil Part Offices or on the Judiciary's Internet site [njcourts.gov](http://njcourts.gov) under the section for Forms. If you decide to file an answer to the complaint made against you:
  - Fill out the Answer form AND pay the applicable filing fee by check or money order payable to: *Treasurer, State of New Jersey*. Include HUD-DC-006022-20 (your Docket Number) on the check.
  - Mail or hand deliver the completed Answer form and the check or money order to the court's address listed above.
  - Hand deliver or send by regular mail a copy of the completed Answer form to the plaintiff's attorney. If the plaintiff does not have an attorney, send your completed answer form to the plaintiff by regular and certified mail. This MUST be done at the same time you file your Answer with the court on or before **08/10/2020**.
- 2. Resolve the dispute.** Contact the plaintiff's attorney, or contact the plaintiff if the plaintiff does not have an attorney, to resolve this dispute. The plaintiff may agree to accept payment arrangements. If you reach an agreement, mail or hand deliver the **SIGNED** agreement to the court's address listed above on or before **08/10/2020**.

**Please Note - You may wish to get an attorney to represent you.** If you cannot afford to pay for an attorney, free legal advice may be available by contacting Legal Services at 201-792-6363. If you can afford to pay an attorney but do not know one, you may call the Lawyer Referral Services of your local County Bar Association at 201-798-2727. Notify the court now if you need an interpreter or an accommodation for a disability for any future court appearance.

/s/ Michelle M. Smith  
 Clerk of the Superior Court



Form A

DANIEL A. Nault  
Plaintiff's Name (first, middle, last)

181. S. Mortz Drive  
Street Address

MILLTOWN NJ 08850  
City, State, Zip

609-286-3974  
Telephone Number

Imperial Dade (Robert Tillis/CEO)  
Defendant's Name (first, middle, last)

255 Route 1 & 9  
Street Address

Jersey City, NJ 07306  
City, State, Zip

(201) 457-0740  
Telephone Number

Superior Court of New Jersey  
Law Division, Special Civil Part

Hudson  
County

Docket Number \_\_\_\_\_  
(to be provided by the Court)

RECEIVED #10  
JUN 24 2020  
SUPERIOR COURT OF N.J.  
FEE OFFICE  
COUNTY OF HUDSON

Civil Action  
Complaint

Type or print the reasons you, the Plaintiff(s), are suing the Defendant(s): (See instruction B)  
Attach additional sheets if necessary.

401k marcit \$13,529.00 (not matched)

2 Days Short of Vested  
Layoff / Fined before becoming vested

The amount you, the Plaintiff(s) are demanding from the Defendant(s) \$ 30,529.00

At the trial Plaintiff will need:

An interpreter ☐ Yes ☒ No Indicate language: \_\_\_\_\_  
An accommodation for disability ☐ Yes ☒ No Indicate accommodation: \_\_\_\_\_

I certify that the matter in controversy is not the subject of any other court action or arbitration proceeding, now pending or contemplated, and that no other parties should be joined in this action.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

June 18<sup>th</sup> 2020  
Date

D. A. Nault  
Your Signature

Daniel A. Nault  
Name Typed, Stamped or Printed

RECEIVED #15  
SPECIAL CIVIL PART  
JUN 24 2020  
SUPERIOR COURT OF NEW JERSEY  
COUNTY OF HUDSON



Court's Address and Phone Number: (201) 795-1

0 Middlesex Special Civil Part

56 Peterson St.  
New Brunswick NJ 08903

Telephone No. (732) 645-4300

Superior Court of New Jersey

Law Division, Special Civil Part

0 Middlesex County

Docket No: DC

Civil Action

**SUMMONS**Check one ☐ Contract ☒ Tort**YOU ARE BEING SUED!****Person or Business Suing You (Plaintiff)**

Daniel Nault

**Person or Business Being Sued (Defendant)**Imperial Dade (Robert Tillis)  
Jersey City, NJ C.F.O.

(See the following page(s) for additional plaintiffs)

(See the following page(s) for additional defendants)

**Plaintiff's Attorney Information**
 BATCH # 784  
 RECEIVED DATE 6/24/2020  
 CA / CK / MO / CG  
 CK / CG ACCT # 536  
 AMOUNT \$82.00  
 PAID BY William Nault

 RECEIVED #11  
 JUN 24 2020  
 SUPERIOR COURT OF NJ  
 FEE OFFICE  
 COUNTY OF HUDSON
**The Person or Business Suing You Claims You Owe the Following:**

	Demand Amount
Filing Fee	\$ 3,529.00
Service Fee	\$ 75.00
Attorney's Fees	\$ 5.00
<b>TOTAL</b>	<b>\$ 3,609.00</b>

**FOR JUDICIARY USE ONLY**

In the attached complaint, the person or business suing you briefly tells the court his or her version of the facts of the case and how much money he or she claims you owe. If you do not answer the complaint, you may lose the case automatically and the court may give the plaintiff what the plaintiff is asking for, plus interest and court costs. You have 35 days from the date of service to file your answer or a signed agreement. If a judgment is entered against you, a Special Civil Part Officer may seize your money, wages or personal property to pay all or part of the judgment. The judgment is valid for 20 years.

**IF YOU DISAGREE WITH THE PLAINTIFF'S CLAIMS, A WRITTEN ANSWER OR SIGNED AGREEMENT MUST BE RECEIVED BY THE COURT ABOVE, ON OR BEFORE \_\_\_\_\_, OR THE COURT MAY RULE AGAINST YOU. IF YOU DISAGREE WITH THE PLAINTIFF, YOU MUST DO ONE OR BOTH OF THE FOLLOWING:**

- Answer the complaint.** An answer form that will explain how to respond to the complaint is available at any of the New Jersey Special Civil Part Offices or on the Judiciary's Internet site njcourts.gov. If you decide to file an answer to the complaint made against you:
  - Fill out the Answer form AND pay the applicable filing fee by check or money order payable to: *Treasurer, State of New Jersey*. Include DC \_\_\_\_\_ (your Docket Number) on the check.
  - Mail or hand deliver the completed Answer form and the check or money order to the court's address listed above.
  - Hand deliver or send by regular mail a copy of the completed Answer form to the plaintiff's attorney. If the plaintiff does not have an attorney, send your completed answer form to the plaintiff by regular and certified mail. This MUST be done at the same time you file your Answer with the court on or before \_\_\_\_\_.
- Resolve the dispute.** Contact the plaintiff's attorney, or contact the plaintiff if the plaintiff does not have an attorney, to resolve this dispute. The plaintiff may agree to accept payment arrangements. If you reach an agreement, mail or hand deliver the SIGNED agreement to the court's address listed above on or before \_\_\_\_\_.

**Please Note -** You may wish to get an attorney to represent you. If you cannot afford to pay for an attorney, free legal advice may be available by contacting Legal Services at \_\_\_\_\_. If you can afford to pay an attorney but do not know one, you may call the Lawyer Referral Services of your local County Bar Association at \_\_\_\_\_. Notify the court now if you need an interpreter or an accommodation for a disability for any future court appearance.

/s/ Name \_\_\_\_\_

Clerk of the Superior Court